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GENERAL COUNSEL
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In the Matter of)
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DISTRIBUTION OF THE 1998 AND 1999)
CABLE ROYALTY FUNDS)
)

Docket No. 2001-8 CARP CD 98-99

**OPPOSITION OF JOINT SPORTS CLAIMANTS
TO PUBLIC TELEVISION'S MOTION TO STRIKE PORTIONS
OF PROPOSED FINDINGS AND CONCLUSIONS**

The Joint Sports Claimants ("JSC") submit this opposition to the motion filed by Public Television Claimants ("PTV") seeking to portions of the proposed findings and conclusions submitted by JSC and the Program Suppliers.

I. JSC CITATION OF BECTON TESTIMONY

During cross-examination of John Wilson, JSC submitted the testimony of Hnery Becton, General Manager of WGBH, testified on behalf of the PTV community in connection with the 1992 Cable Act. During that testimony, Mr. Becton explained why PTV needed must-carry rights and why PTV opposed retransmission consent for PTV stations. JSC referred to that testimony in paragraph 353 in its Proposed Findings. PTV has now moved to strike that reference, claiming that JSC may not cite Mr. Becton's testimony "for the truth of the matter asserted." *See* PTV Motion at 3-4.

JSC do not dispute that JSC Exhibit 57-RX (like all other exhibits concerning congressional testimony and statements before agencies) should not be viewed as proving the matter asserted. However, a plain reading of Paragraph 353 suggests that JSC 57-RX was properly cited as the testimony of Mr. Becton and the position of PTV, rather than as substantive evidence. Paragraph 353 states:

Indeed, PTV's main concern in pressing for the renewal of the must-carry rules in the context of the 1992 Cable Act was that its goal of universal access would be set back without the ability to compel cable systems to carry its signals. Mr. Becton, *speaking on behalf of the PTV community*, stated that close to 100 PTV stations found themselves dropped by cable systems in the 1980's when the must-carry rules were eliminated. *See* JSC Ex. 57-RX at 835. *This testimony* indicates that, in the absence of must-carry rules, PTV's distant signal carriage would be significantly less than it is today, and that it is likely that a substantial number of the partially distant instances of PTV carriage are due to the must-carry rules, rather than any value placed by cable operators on the importation of duplicative PTV signals. In the absence of a compulsory license, it would be difficult to imagine PTV obtaining compensation for carriage of such signals, if the signal were carried at all.

(emphasis supplied). JSC in paragraph 353 were not relying upon Mr. Becton's testimony to establish that 100 PTV stations lost their carriage when the must-carry rules were eliminated in the 1980's. Instead paragraph 353 was intended to show the "state of mind" of PTV -- that PTV believed that, in the absence of a must-carry regime, large numbers of cable systems would not want to carry PTV stations. As a seller of its programming, PTV would thus accept little or no compensation in order to ensure continued carriage, including in instances where those stations were carried on a partially distant basis. For this reason, paragraph 353 is located in the discussion of the application of the seller's perspective to PTV.

JSC believe that the issue raised by PTV is important and should be considered in light of all of the parties' references to similar exhibits. For example, in paragraph 88 of the National Association of Broadcasters' ("NAB") Rebuttal Findings, NAB makes reference to the testimony of Edward Fritts in 1989 indicating that NAB would not take a position with regard to cable rate regulation if NAB achieved its goals of having must-

carry and mandatory channel positioning enacted into law. NAB presumably did not intend to offer that testimony for the truth of the matter asserted therein, but only to show NAB's position as of 1989, before it actually did support rate regulation in the context of the 1992 Cable Act and before the FCC.

II. **PROGRAM SUPPLIERS' CITATION OF JSC EXHIBIT 56-RX**

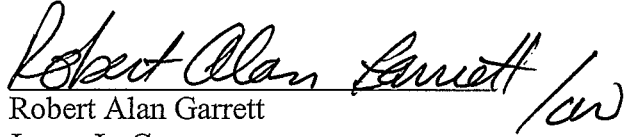
PTV's motion to strike Program Suppliers' citation of JSC Exhibit 56-RX is irrelevant because the information included in JSC Exhibit 56-RX is already substantively in the record in aggregate form. JSC Exhibit 56-RX is helpful because it shows, on a system-by-system basis, how cable operators valued PTV programming in relation to what those same operators paid to import a PTV signal.¹ However, the results of the Bortz survey overall prove the same point, i.e., that cable systems carrying PTV distant signals valued PTV programming roughly proportional to what they paid in royalties to carry those signals. *See* Trautman W.R.T. at 5-8. Moreover, Dr. Johnson *agreed* that the results of the Bortz survey would produced such results when confronted with JSC Exhibit 56-RX. *See* Tr. 9291-92 (Johnson).² As such, the Program Suppliers' citation of JSC Exhibit 56-RX is consistent with the other evidence in the record.

¹ PTV sponsored substantive exhibits that provided a portion, but not all of the same information. *See* PTV Exs. 1-X, 2-X, 3-X and 4-X (individual responses to the Bortz survey).

² Dr. Johnson's response to that line of inquiry, that one could not use the Bortz survey to compare the values of PTV signals versus commercial signals, was inconsistent with his direct testimony, in which he lauded using the Bortz survey as a measure of the relative marketplace value of the various program categories. Since the methodology of the Bortz survey was known to Dr. Johnson at the time of his direct testimony, Dr. Johnson's testimony on rebuttal should be given little weight.

For the foregoing reasons, PTV's motion should be denied.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Robert Alan Garrett", followed by a large, stylized initial "CW".

Robert Alan Garrett

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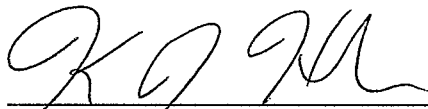
September 8, 2003

CERTIFICATE OF SERVICE
Docket No. 2001-8 CARP CD 98-99

I hereby certify that copies of the foregoing Opposition of Joints Sports Claimants To Public Television's Motion To Strike Portions of Proposed Findings And Conclusions was sent on September 8, 2003, by hand delivery and overnight mail, to the following parties:

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Kevin Hough

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September 8, 2003

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Washington, D.C. 20540

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GENERAL COUNSEL
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Re: Distribution of 1998 and 1999 Cable Royalty Funds,
Docket No. 2001-8 CARP CD 98-99

Dear Sirs:

In accordance with the Panel's Order of August 28, 2003, the National Association of Broadcasters and the Public Television Claimants, by their respective counsel, hereby advise the Panel and all parties that they do not intend to call Mr. James Trautman for cross-examination on September 15, and that they are discussing with Joint Sports Claimants the possible filing of a joint stipulation in lieu of Mr. Trautman's appearance.

Respectfully submitted,



Ronald G. Dove, Jr.
Counsel for Public Television Claimants



John I. Stewart, Jr.
Counsel for the National Association
of Broadcasters

cc: All Parties